



# LEGAL RIGHTS AFTER VIOLENCE IN THE WORKPLACE

## For Half Moon Bay farm workers who have suffered gun violence at work

These materials were created by lawyers and community advocates in California who serve farmworker and immigrant communities. These materials cover some of your legal rights when gun violence has happened in the workplace. You have the right to consult with any attorney who you feel comfortable contacting. If you do not know who to contact, advocates can help refer you to community organizations, state agencies and lawyers who can help.

### 1. Do I have to go back to work at the farm? What are my legal rights?

An employer can generally discipline or fire a worker for refusing to report to work when scheduled, unless the worker has a legally protected reason for not working. Legally protected reasons for not going back to work can include one or more of the following options for protected time off:

#### Paid sick leave

First, if you are understandably traumatized by the shooting and do not feel that you are mentally or physically ready to go back to work on the farm, you can take paid sick leave to try and rest and heal. You can also take time off to seek medical help, including talking with a mental health professional about how the shooting has affected you. In California, you are generally entitled to 1 hour of paid sick leave (at your normal hourly rate) for every 30 hours that you have worked. Employers are required to allow you to take a minimum of at least 3 days of accrued paid sick leave each year.

To request paid sick leave from your employer, just tell your employer you are not well because of the trauma of the shootings and need time off. If possible, it is best to have a witness with you when you make this request or have the request in writing (sending a text message works too). You do not have to make the request in writing, but it helps prove that you made the request. If you take paid sick leave, the employer is not lawfully allowed to fire you or retaliate against you for requesting or taking the leave.

#### Workers' compensation leave, medical treatment, and benefits

In addition to requesting paid sick leave, you may be entitled to additional leave, benefits and medical treatment through the employer's "workers' compensation" insurance. Workers' compensation coverage applies when you are injured on the job. Workplace injuries can

include mental health injuries due to workplace trauma, like witnessing gun violence. If you feel you have suffered a mental health injury because of the shootings, you can report it as a workplace injury to your employer. The employer is required to provide you with the form and information you need to file a workers compensation claim. If your claim is accepted, you can be eligible for time off from work if ordered by your doctor, temporary or permanent disability benefits while you are off from work (payments during your period of disability), and work-duty accommodations your doctor may require for when you return to work (an example of an accommodation might be a lighter schedule or different work assignment).

### **Unpaid time off and disability accommodations**

If your doctor believes that your mental trauma from the shooting is a “serious health condition,” you may also request and be entitled to up to 12 weeks of additional *unpaid* leave from your employer in order to heal and/or seek medical (including mental health) help. This means you would not get a paycheck, but your employer would have to keep your job for you until you are ready to return.

If the mental trauma you have suffered from the shooting “substantially limits a major life activity” (for example, you are so anxious, stressed, and/or depressed because of the shooting and you cannot sleep or have trouble concentrating, interacting with others, or working), then your condition may also qualify as a “disability” under state and federal laws. Under those laws, you can request that your employer provide you with “reasonable accommodations” that will allow you to perform the essential functions of your job despite your disability. Such reasonable accommodations may include additional time off from work, a part-time work schedule, or even reassignment to a different work location.

## **2. I live in housing provided by the farm. Will I lose my housing if I quit my job?**

Generally, if you lose your job with an employer, then losing your job ends your legal right to continue living in housing provided by that employer. The employer, however, cannot immediately push you out of the employer-provided housing. The employer can only force you to leave through a legal eviction process. In most cases, the employer/landlord will first serve you with a formal notice of eviction, which starts a legal process that allows you an opportunity to legally challenge the eviction. The legal process can delay eviction for a period of time and give you a little more time to find other housing. If you receive an eviction notice you should immediately contact a housing rights lawyer.

## **3. Are there monetary benefits I can apply for if I decide to quit my job on the farm?**

### **Unemployment insurance benefits**

In California, workers with legal authorization to work in the United States can apply to the state Employment Development Department (EDD) for government-funded payments to help pay their expenses during periods of unemployment. The worker is generally eligible for such

payments if the worker has become unemployed through “no fault of their own” and if they are otherwise “ready, able, and willing to work.” These payments are called unemployment insurance benefits.

If you voluntarily quit your job, you are only eligible for unemployment insurance benefits if you quit for “good cause” (a good reason) *and* if you tried to address the problem with your boss before you quit (or you show it was useless to do so).

Here, if you feel that you need to quit your job at the farm because going back to the location of the shootings is negatively affecting your health (for example, it is making you anxious, stressed, depressed, or affecting your sleep), that may be “good cause” to quit. If your boss is mistreating you (for example failing to pay you the wages you’re owed or your housing conditions on the farm are not up to code), that mistreatment may also be considered “good cause” to quit.

Before you quit, however, you should raise the problem with your boss and ask him/her to fix it (for example, assign you to work in a different location or fix the workplace abuses you’ve raised). If there are no other practical options the employer could take to address the problem, or other workers have already complained to the boss about the problem but nothing changed, you can explain to EDD that it was useless to ask.

To apply for unemployment insurance, you can contact EDD by phone. EDD is required to provide you with an interpreter if you request one:

**English and Spanish: 1-800-300-5616**

**Mandarin: 1-866-303-0706**

**Cantonese: 1-800-547-3506**

### Disability benefits

If you are temporarily unable to work (at the farm or anywhere else) because of the mental anxiety, stress, and/or trauma of the shootings, and a doctor is willing to sign a certification about this disability, then you can apply to EDD for monetary payments to help cover your expenses during your period of disability. These monetary payments are called disability benefits.

Unlike unemployment insurance benefits, an application for disability benefits does NOT depend on the worker’s current or future legal authorization to work.

You should talk to your health care provider if you are interested in applying for disability benefits.

### State and community emergency relief funds

Whether you quit working or not, there are state and community emergency funds you can apply to for monetary support.

The California Victim Compensation Board (CalVCB) is a state program dedicated to providing financial compensation for crime-related expenses. Victims who suffer physical injury, threat of physical injury or emotional injury as a direct result of a violent crime may qualify for assistance. Those who witnessed the crime, and may be traumatized by it, and family members of victims may also qualify. CalVCB can cover up to \$70,000 in reimbursements.

- To learn more, visit [www.victims.ca.gov](http://www.victims.ca.gov) or call 1-650-599-7479.
- See also: [CalVCB fact sheet in English and Spanish](#); [CalVCB fact sheet in simplified Chinese](#)

Community groups have also been collecting donations from the public to support impacted workers. Impacted workers, victims, and surviving families can get more information on how to receive these emergency funds from Ly Nguyen at Stop AAPI Hate, (510) 590-1264, [lnghuyen@stopaapihate.org](mailto:lnghuyen@stopaapihate.org).

### **4. I was a worker on the affected farms, but I am undocumented and I am worried about the immigration consequences I may face if I stop working at the farm. What are my options?**

The California Labor Commissioner's Office (the state agency that enforces state labor protections for workers in California) has said that it has started an investigation of potential labor violations at the farms where the shootings took place and has indicated that it may be willing to seek "deferred action" from the federal Department of Homeland Security for affected workers. If granted, the deferred action would only provide *temporary* authorization for undocumented workers to be in the United States. The benefits and risks of seeking deferred action should be discussed with a trusted immigration attorney.

If you are a trafficking victim (you have been forced by fraud or coercion into working on the farm), you may be eligible for a T visa, which can be a path to permanent legalization. Victims of certain qualifying crimes may be eligible for a U visa, which can also be a path to permanent legalization.

It is worth noting that in California, it is unlawful for an employer to make any immigration-related threats to a worker in order to stop a worker from exercising their workplace rights (for example, threatening to call immigration authorities if the worker asks for paid sick leave, files a workers' comp complaint, or cooperates in a government investigation of the employer). Such immigration-related threats may be a qualifying crime for a U visa. If an undocumented worker is

the victim of such a threat, they should explore the possibility of applying for a U visa with a trained immigration advocate.

You can contact the numbers below to seek a free confidential consultation with a trained immigration advocate.

**Spanish:**

Immigration Institute of the Bay Area  
600 Allerton Street, Suite 101, Redwood City, CA 94063  
(650) 780-7530

*\*If you call, please be sure to indicate that you are a Half Moon Bay farmworker*

**Spanish, Mandarin & Cantonese:**

Community Legal Services in East Palo Alto  
1861 Bay Road, East Palo Alto, CA 94303  
(650) 326-6440

*\*If you call, please be sure to indicate that you are a Half Moon Bay farmworker*

**Spanish:**

Services, Immigrant Rights and Education Network (SIREN)  
1415 Koll Circle, Suite 108, San Jose, CA 95112  
(408) 453-3003

*\*If you call, please be sure to indicate that you are a Half Moon Bay farmworker*

**Mandarin & Cantonese:**

Asian Law Alliance  
991 W. Hedding St. #202, San Jose, CA 95126  
(408) 287-9710

*\*If you call, please be sure to indicate that you are a Half Moon Bay farmworker*

## **5. I have other questions about my workplace rights on the farm. Can I get a confidential consultation with a workers' rights attorney?**

Employees on both affected farms have the right to basic wage and hour protections (like the minimum wage, overtime, meal and rest breaks), workplace health and safety protections, protections from discrimination and retaliation, and more. These rights apply regardless of an employee's immigration status.

If you have any questions about your workplace rights on the farm and would like to have a confidential consult with a workers' rights attorney, you can contact the following organizations:

*Spanish, Mandarin & Cantonese (interpreters available in any language)*

California Rural Legal Assistance, Inc.

3 Williams Road, Salinas, CA 93905

**(831) 757-5221**

*\*If you call, please be sure to indicate that you are a Half Moon Bay farmworker*

*Mandarin & Cantonese:*

Advancing Justice - Asian Law Caucus

55 Columbus Avenue, San Francisco, CA 94111

**(415) 896-1701**

*\*If you call, please be sure to indicate that you are a Half Moon Bay farmworker*